Knapp-Sherrill Company *and* United Food and Commercial Workers International Union, AFL-CIO, Local Union No. 171, Petitioner. Case 23-AC-42

August 13, 1982

DECISION ON REVIEW

On September 25, 1980, the Regional Director for Region 23 issued his Decision and Order Amending Certification of Representative in the above-captioned proceeding in which he amended the certification, substituting United Food and Commercial Workers International Union, AFL-CIO, Local Union No. 171, for Amalgamated Meat Cutters Local No. 173 (herein Local 173).

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision. The Employer contended that Amalgamated Meat Cutters, Local 171 (herein Local 171), was not a legal successor to Local 173, and that, in any event, Petitioner is not a continuation of Local 171 as United Food and Commercial Workers International Union, AFL-CIO (herein UFCW), is not the successor to the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (herein Meat Cutters).

By telegraphic order dated November 18, 1980, the National Labor Relations Board granted the Employer's request for review.

The Board has considered the entire record in this case, and makes the following findings:

In 1972, Local 173 was certified in Case 23-RC-3595 as the representative of the production and maintenance employees at the Employer's Donna, Texas, facility. Subsequently, Local 173 and the Employer entered into a series of collective-bargaining agreements, the most recent of which was effective from September 30, 1977, through September 29, 1980.

Local 173 was chartered in approximately 1965, and had jurisdiction over the geographical area of Texas known as the lower Rio Grande Valley. Local 171 was chartered in approximately 1940 and, prior to 1978, had geographical jurisdiction over the San Antonio, Texas, area. Local 171's headquarters are located in San Antonio.

On October 23, 1977, Local 173 held an executive board meeting which was attended by Erby M. Rendon, Local 171's secretary-treasurer. Rendon addressed the executive board on the subject of a merger of the two locals. At that meeting Local 173's executive board passed a motion in favor of the merger.

A notice of a general membership meeting, dated October 27, 1977, was disseminated, which stated that a meeting was to be held on November 13, 1977, at 2 p.m., at Jessie's Place in Elsa, Texas. The notice also stated that:

> At this meeting we will act in considering Local 173 to merge with Local 171 of San Antonio, Texas.

While it appears that this notice was mailed to Local 173's members, it is unclear whether the notice was posted at the Employer's facility.

The general membership meeting was held as scheduled on November 13. At the meeting, there was discussion on the relative merits of the proposed merger, as well as discussion of any drawbacks. Following the discussion, a motion was introduced to authorize Local 173's financial secretary, Benito Campos, to negotiate a merger with Local 171, and to obtain a written understanding of the terms of the merger. A secret ballot election was conducted, with the motion passing by a vote of 84 in favor and 18 opposed. No voter lists were kept, nor was the employees' membership checked before ballots were distributed and the vote taken. At the time of the vote, Local 173 had approximately 100 members.

On November 28, 1977, notice of a December 4 membership meeting was sent to the members of Local 171, with the first item on the agenda the proposed merger with Local 173. At the meeting, Rendon told the membership that Local 173 had approved the merger, and that the issue was now before Local 171. A motion was introduced to give Rendon and Local 171's executive board full authority to consummate a merger with Local 173. The motion passed on the basis of a show of hands.

Following a meeting between Rendon and Campos, documentation of the merger was submitted by Locals 173 and 171 to Meat Cutters for approval. Subsequently, Meat Cutters issued a merger agreement, with an effective date of January 2, 1978. Under the agreement, Local 171 was to be the surviving Local, and it was to assume all the duties and responsibilities of Local 173, including the administration of all collective-bargaining agreements.

When the merger was effectuated all five of Local 173's officers resigned. At that time, Benito Campos became second vice president of Local 171, and continued to service the old Local 173 area as he had done prior to the merger.[1] The

[1] Campos left Local 171's employ in approximately July 1978. Business Agent Joe Esquivel was assigned the old Local 173 area, and the Employer was notified of Esquivel's assumption of Campos' duties by letter dated July 24, 1978.

grievance procedures and bylaws for Locals 173 and 171 were the same, and no changes were made after the merger. The dues of old Local 173's members were slightly increased after the merger to conform with Local 171's dues structure. Negotiations were conducted by Local 171 in the same manner as by Local 173, with the chief steward and area business agent on the negotiating team.

In February 1978, written notification of the merger was sent to all employers who were a party to collective-bargaining agreements with Local 173, including the Employer. The letters, signed by Rendon as secretary-treasurer of Local 171 and by Campos in his new position as second vice president of Local 171, stated that Locals 173 and 171 had merged and that Local 171 had assumed the obligations and duties incurred by Local 173.

By letter dated April 14, 1978, the Employer, following extensive correspondence with Local 171, agreed to recognize Local 171 as the contracting Union in the existing collective-bargaining agreement signed by Local 173. The Employer also agreed to forward union dues collected under checkoff authorizations to Local 171. Both the Employer's recognition of Local 171 as the successor to Local 173 and its agreement to forward dues to Local 171 were based on Local 171's agreement to hold the Employer harmless for any and all claims that might arise from its recognition of Local 171.

Subsequent to its recognition of Local 171, the Employer began forwarding dues deductions and seniority lists to Local 171, and regularly adjusted grievances with Local 171. The Employer and Local 171 also engaged in collective-bargaining negotiations over a midterm wage reopener, although no agreement was reached. Present at the negotiations for Petitioner were Rendon, Esquivel, the chief steward at Employer's facility, and Petitioner's attorney.

In June 1979, Local 171 conducted an election of officers. There were two polling sites, one in San Antonio and the other in the geographic center of old Local 173. Of the 10 officers elected 2 were from the Rio Grande Valley area.

The Employer contends that the procedures followed in the merger process did not provide adequate due process safeguards, primarily arguing that union members and nonmembers were not afforded an opportunity to participate in the merger vote. The Employer also contends that the merger resulted in a substantially different bargaining representative such that Local 173 lost control of its "affairs and destiny." The Regional Director, relying in substantial part on *Amoco Production Company*,[2] rejected the Employer's contentions, and found that Local 171 was a continuation of Local 173. While we agree that the evidence shows a substantial continuation of the bargaining representative, we find that, in these circumstances, the Employer is estopped from challenging the procedures employed in the merger.[3] Indeed, the Employer, by recognizing Local 171 as the successor to Local 173, effectively waived its right to challenge the procedures employed in the merger.[4] That the Employer had knowledge of the merger is not in dispute; that it had doubts about Local 171's status at the time of the merger is clear. The record reveals that there was an extensive exchange of communications, written and verbal, between the Employer and officials of Local 171, beginning with Local 171's notice of the merger to the Employer by letter dated February 14, 1978, and continuing through the Employer's recognition of Local 171 by letter dated April 14, 1978. It is this letter that most clearly evinces the Employer's doubts and its hesitation to recognize Local 171. For the Employer required that Local 171:

> . . . hold the Company harmless from any and all claims, demands, suits, or other forms of liability that may arise out of, or be in any way connected with, its recognition of [Local 171] as the Assignee and successor to Local No. 173. . . .

That the Employer knew it had the right to refuse to recognize Local 171 as the successor to Local 173 is apparent, given the conditions for recognition set forth in the letter of April 14, 1978. It may be readily inferred that, had Local 171 refused to agree to the conditions set forth, the Employer would have refused to recognize it as the successor union. That the Employer intentionally and voluntarily relinquished this right is also apparent from the recognition letter of April 14, 1978; the recognition was the result of discussions with various representatives of Local 171.

Thereafter, the Employer, in all respects, dealt with Local 171 as its employees' bargaining representative. The Employer forwarded dues payments and seniority lists to Local 171, adjusted numerous grievances with Local 171's business agent, regularly received the business agent to discuss general employee problems or concerns, and, most signifi-

[2] 239 NLRB 1195 (1979), remanded 613 F.2d 107 (5th Cir. 1980).

[3] Chairman Van de Water and Member Hunter note that in view of the finding that the merger of Locals 171 and 173 were not challenged by the Employer and that it was therefore estopped from challenging such merger at a later date, they find it unnecessary to rely, as the Regional Director did, on *Amoco Production Company*, 239 NLRB 1195 (1979).

[4] A waiver is the intentional reliquishment of a known right. *John J. Roche & Co., Inc.*, 231 NLRB 1082, 1095 (1977), enfd. *sub nom. Larkins v. N.L.R.B.*, 596 F.2d 240, 247 (7th Cir. 1979).

cantly, bargained with Local 171 over the terms of a proposed midterm wage reopener. Even after negotiations ceased without an agreement, the Employer continued to deal with Local 171 as its employees' bargaining representative, adjusting grievances and the like. It was not until the existing collective-bargaining agreement expired in 1980, some 2 years after the merger, and after Local 171 requested negotiations for a new agreement, that the Employer stated it did not believe that Local 171 was the legal successor to Local 173. Until Local 171 requested negotiations, Local 171 appears to have had no indication that the Employer believed that it was not the bargaining representative of its employees.

Thus, it is evident that Local 171 relied, to its detriment, on the Employer's recognition. Local 171 took no further action during this 2-year period to establish its status as the collective-bargaining representative of the Employer's employees. Had the Employer challenged the merger procedures when it had notice of the merger, as it was free to do, Local 171 could have sought to amend the certification during the term of the collective-bargaining agreement, with minimal or no disruption to the bargaining relationship due to the continuing existence of the collective-bargaining agreement with Local 173. But in challenging the merger procedures at the expiration of the collective-bargaining agreement, 2 years after extending recognition and, as indicated above, after in all respects dealing with Local 171 as the representative of its employees, the Employer disrupted the bargaining relationship at a time when Local 171's role as bargaining representative is most vital to the employees: at the commencement of negotiations for a new collective-bargaining agreement. Therefore, as the Employer had but to question initially the merger procedures rather than recognize Local 171, and as the Employer conducted business with Local 171 in a manner fully consistent with its recognition for 2 years thereafter, we find the Employer may not now challenge the procedures employed in the merger.[5]

Our review of the record also leads us to conclude that Local 171 is a continuation of Local 173. The operating bylaws and grievance procedures remained virtually the same, a business agent services solely the Rio Grande Valley area, and negotiations are conducted in the same manner. While Local 171's dues are somewhat greater than Local 173's, the increase is neither so substantial nor of such singular significance as to overcome a finding that Local 171 is a continuation of Local 173. Additionally, there is ample evidence that Local 171 has, in all respects, assumed Local 173's responsibility to administer the collective-bargaining agreement entered into with the Employer.[6]

The Employer also contends that Petitioner is not a successor to Local 171, alleging that neither its employees nor Local 171's members were afforded the opportunity to vote on the merger between Meat Cutters and Retail Clerks International Union (herein Retail Clerks).

On June 5 and 6, 1979, Meat Cutters and Retail Clerks held a special convention in Washington, D.C., attended by delegates of both unions for the purpose of effectuating a merger to form UFCW. According to the merger agreement, approved by the convention and effective June 7, 1979, the UFCW's executive board was to be comprised of both Internationals' vice presidents, secretary-treasurers, and presidents. The geographical divisions or districts of Meat Cutters were to remain unaltered, with any proposed change requiring unanimous agreement of the Meat Cutters representatives on the UFCW executive board. All standing committees of the International unions were to survive unless a counterpart existed, in which case the duplicative committees were to be consolidated. Local unions, including Local 171, automatically became charter members of UFCW, and were not required to merge with other locals. Additionally, the agreement provided that UFCW assumed all rights, property, and obligations of the two International unions, including the responsibility for administering all collective-bargaining agreements. Also pursuant to the agreement, all members of the

[5] See *Good Hope Industries, Inc., d/b/a Gasland, Inc.*, 239 NLRB 611, 612 (1978). See also *Duquesne Light Company, etc.*, 248 NLRB 1271, and fn. 6 (1980); *Newark Stove Co.*, 143 NLRB 583 (1963). *Canton Sign Co.*, 174 NLRB 906 (1969), enforcement denied 457 F.2d 832 (6th Cir. 1972), is distinguishable. There, the court denied enforcement because both the predecessor and successor local unions were voluntarily recognized by the employer without a showing of majority support. The court also noted that the employer had no union members in its employ at the time of the merger. Here, Local 173 was certified as the bargaining representative of the Employer's employees after a Board-conducted election, and the Employer employed union members at both the time of the merger vote and recognition of Local 171. Indeed, the chief steward for the Employer's employees was present at Local 173's October 23, 1977, executive committee meeting where the decision was made to put the merger issue before the membership for a vote. The elements of estoppel—knowledge, intent, mistaken belief, and detrimental reliance—are also satisfied herein. See *Bob's Big Boy Family Restaurants, A Division of Marriott Corporation*, 259 NLRB 153, 154, fn. 9 (1981); *Black's Law Dictionary*, pp. 632–633 (4th ed. 1951). When the Employer recognized Local 171, it induced Local 171 to believe mistakenly that the Employer had waived its arguments with respect to the merger of Locals 171 and 173. That the Employer intended Local 171 to rely on the recognition is clear by its actions described *supra*, which in sum constituted a "business as usual" approach. That the reliance was detrimental to Local 171 and the Employer's employees is also discussed *supra*: the disruption of the bargaining relationship at a time when the bargaining representative and the employees were possibly most vulnerable—at the expiration of the collective-bargaining agreement.

[6] See *New Orleans Public Service, Inc.*, 237 NLRB 919, 921 (1978); *Montgomery Ward & Co., Incorporated*, 188 NLRB 551, 552 (1971).

Meat Cutters and Retail Clerks became members of the UFCW as of the date of their original membership in their respective unions.

Although permitted to send four delegates, Local 171's executive committee met on March 24, 1979, and voted not to send delegates to the special convention. Local 171's members did not vote on the proposed merger of the International unions but were notified of the merger in small shop meetings by Local 171's business agents.

Subsequent to the merger, Local 171 was notified that it would be receiving a new charter, reflecting UFCW as the International union. The same officers, staff, dues structure, operating bylaws, and geographical jurisdiction that existed prior to the merger were retained by Local 171 after the merger.

Based on the foregoing, the Regional Director found that the identity and continuity of the bargaining representative has been preserved subsequent to its change in name in June 1979, and granted the amendment of certification. We agree.

In so finding, we reject the Employer's contention that the change in name is improper because its employees, and Local 171's members, did not participate in or ratify the merger. The record amply demonstrates that there is continuity of representation. Thus, nothing but Local 171's designation—i.e., that it is chartered by UFCW rather than Meat Cutters—changed. Indeed, the same personnel who serviced Local 171's various shops continued doing so after the merger of the International unions, the jurisdiction of Local 171 remained the same after the merger and the rights and privileges of the employees represented by Local 171 were unchanged by the merger. Moreover, Local 171 was given the opportunity to send delegates to the special convention, but its executive committee exercised its discretion to choose not to do so.[7] Additionally, we note that the employees, by their membership, were bound to the terms and conditions of the Meat Cutters constitution, which expressly authorized the Meat Cutters International executive board to merge Meat Cutters with other International unions.[8] Pursuant to this constitutional authority, the Meat Cutters International executive board, through the merger agreement with Retail Clerks, bound its members and locals, including Local 171, to become members and locals of the newly formed UFCW.[9]

Therefore, as the merger of the two International unions did not affect representation at the local level, and no improprieties by Meat Cutters were established, we hereby affirm the Regional Director's amendment of the certification.[10] This amendment is not, however, to be considered a new certification or a recertification.

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[7] Erby M. Rendon, Petitioner's financial secretary, testified that Petitioner chose not to send delegates because of financial considerations and not as an expression of dissent to the merger of the International unions.

[8] Constitution of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, as amended (1976), art. VII, sec. 2(d).

[9] Merger Agreement of Retail Clerks and Meat Cutters, secs. 11 and 13.

[10] *Texas Plastics, Inc.*, 263 NLRB No. 59 (1982); *Warehouse Groceries Management, Inc.*, 254 NLRB 252, 256 (1981); *St. Mary's Home, Inc. t/a St. Mary's Infant Home*, 255 NLRB 1139, 1140 (1981). See also *American Enka Company, a Division of Akzona Incorporated*, 231 NLRB 1335, 1337 (1977); *Wellman Industries, Inc.*, 248 NLRB 325, 328 (1980).